

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Reauction of Certain C and F Block)
Broadband PCS Licenses)
)
Petitions for Reconsideration of the)
Order on Reconsideration of the)
Fourth Report and Order)
)

WT Docket No. 97-82

DA 00-760

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To: The Commission

OPPOSITION OF GTE

**GTE Service Corporation and its
domestic telecommunications,
wireless, and long distance
companies**

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April 17, 2000

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SUMMARY

GTE respectfully submits its Opposition to the Petition for Reconsideration filed by U.S. West Wireless, LLC (“US West”) and Sprint Spectrum L.P. (“Sprint”) (collectively “Petitioners”) in connection with the upcoming reauction of PCS C and F Block licenses. Sprint and U.S. West specifically request that, *instead of* providing relief from the spectrum cap for purposes of that spectrum, the Commission fragment the 30 MHz C-block spectrum into 10 MHz blocks.¹ Their theory appears to be in part that fragmentation will allow flexibility -- all companies will be able to bid for as many small “building blocks” of spectrum as they need and as many as they can acquire without exceeding the 45 MHz spectrum cap.

GTE supports the removal of C and F Block eligibility restrictions, provided that the Commission also lifts the spectrum cap to ensure an evenhanded auction that does not favor a small pool of companies. GTE opposes the Sprint/U.S. West proposal, as it (1) inhibits plans for third-generation (“3G”) services; (2) contravenes Commission rulings that spectrum fragmentation should be avoided when the spectrum can be used most efficiently in more substantial quantities; and (3) is anti-competitive and discriminatory.

While a 10 MHz block is enough for a company to compete in the market for second-generation voice services on a stand-alone basis, it is woefully inadequate to provide even very modest wireless Internet services. In these circumstances, spectrum fragmentation without spectrum cap relief would ironically *create* the same competitive

¹ Petition at 4-7.

problems that the imposition of the cap was meant to *avoid* in the 2G competitive landscape. It would almost certainly result in less aggressive competition against incumbents than an open auction free of cap constraints. Indeed, the new spectrum could be divided among as many as three companies, each of which would be unable to offer the full complement of services now demanded by consumers.

Nor is there any basis for the Sprint/U.S. West purported concern that, without the fragmentation, companies may be saddled with 30 MHz of spectrum most of which they do not need.² The main liquidity problem that GTE has encountered concerning that market is a shortage of sellers, not buyers. Moreover, the possibility that removing the cap would result in different companies having access to different amounts of spectrum is not a cause for alarm in a competitive market (as the national wireless marketplace has doubtless become). The Commission has already accepted this idea by licensing the Commercial Mobile Radio Services ("CMRS") spectrum in different-sized blocks. In any event, the Commission could limit potential disparities by adopting an interim cap of 60 MHz (with at least 15 MHz coming from the C or F Block PCS spectrum). Finally, if the Commission were to extend the cap to this spectrum, GTE's preference is for the Commission to auction the 30 MHz C-Block spectrum in 20 MHz and 10 MHz parcels.

² *Id.* at 5-7.

TABLE OF CONTENTS

SUMMARY	i
I. SPECTRUM FRAGMENTATION AND THE RETENTION OF THE CAP WOULD PROMOTE INEFFICIENCY AND RESULT IN LESS AGGRESSIVE COMPETITION	3
II. THE BENEFITS CITED BY SPRINT AND U.S. WEST DO NOT COUNTERBALANCE THE RISKS OF SPECTRUM FRAGMENTATION.....	6
III. CONCLUSION	10

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To: The Commission

OPPOSITION OF GTE

GTE Service Corporation and its below-listed affiliates (collectively "GTE")¹ respectfully submit their Opposition to the Petition for Reconsideration filed by U.S. West Wireless, LLC ("US West") and Sprint Spectrum L.P. ("Sprint") (collectively "Petitioners") in connection with the upcoming reauction of PCS C and F Block licenses.² Sprint and U.S. West specifically request that *instead of* providing relief from

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, and GTE Information Services.

² *Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82*, Public Notice, DA 00-760 (April 5, 2000). Petition for
(Continued ...)

the spectrum cap for purposes of that spectrum, the Commission fragment the 30 MHz C-block spectrum into 10 MHz blocks.³ Their theory appears to be in part that fragmentation will allow flexibility -- all companies will be able to bid for as many small "building blocks" of spectrum as they need and as many as they can acquire without exceeding the 45 MHz spectrum cap.⁴

GTE supports the removal of C and F Block eligibility restrictions, provided that the Commission also lifts the spectrum cap to ensure an evenhanded auction that does not favor a small pool of companies.⁵ GTE opposes the Sprint/U.S. West proposal,⁶ as it (1) inhibits plans for third-generation ("3G") services; (2) contravenes Commission rulings that spectrum fragmentation should be avoided when the spectrum

Reconsideration (Expedited Action Requested) of US West and Sprint (dated April 4, 2000) ("Petition"). See *Auction of C and F Block Broadband PCS Licenses: Notice of Auction Scheduled for July 26, 2000*, Public Notice, DA 00-49 (January 12, 2000).

³ Petition at 4-7.

⁴ *Id.* at 5.

⁵ GTE hereby incorporates all of its prior submissions filed in response to the petitions of Nextel Communications, Inc. and SBC Communications Inc. regarding PCS C and F Block rules, and its own petition for a waiver of the eligibility restrictions, and a declaratory ruling that the cap does not apply, or alternatively a waiver of the cap. See *In the Matter of Reauction of Certain C and F Block Broadband PCS Licenses*, DA 00-191, DA 00-145, Comments of GTE (filed Feb. 22, 2000); Reply Comments of GTE (filed March 1, 2000); *In the Matter of GTE Service Corporation Petition for Waiver of Eligibility Restrictions and Declaratory Ruling that the CMRS Spectrum Cap Does Not Apply to the Auction of PCS Frequency Blocks C and F Scheduled to Begin on July 26, 2000, or, Alternatively, for a Waiver of the Cap* (filed Mar. 8, 2000). In the present pleading, therefore, GTE refrains from elaborating on its previously stated positions and limits its response to the discrete issues addressed in the US West-Sprint Petition.

⁶ Petition at 4-7.

can be used most efficiently in more substantial quantities; and (3) is anti-competitive and discriminatory.

I. SPECTRUM FRAGMENTATION AND THE RETENTION OF THE CAP WOULD PROMOTE INEFFICIENCY AND RESULT IN LESS AGGRESSIVE COMPETITION

The Sprint/U.S. West proposal should be viewed in light of the advent of robust consumer demand for wireless Internet access and other spectrum-intensive wireless data services. This dramatic development makes the “small building block” proposal no different than the type of inefficient fragmentation of the spectrum that the Commission has rejected in the past. Coupled with retention of the cap, the proposal allows various anti-competitive strategies that would not be available to incumbents if the cap did not apply.

While a 10 MHz block is adequate for a viable stand-alone offering of voice services, it is nowhere near enough for a viable offering of wireless Internet access and other 3G services. Specifically, GTE has estimated the amount of spectrum necessary for 3G wireless services to be as much as 20 times or more per-subscriber capacity than voice users. That estimate is based on many conservative assumptions – it assumes that the services demanded by consumers will fall short of the home Internet broadband experience (what Sprint appears to refer to as “2.5G”).⁷ It also assumes relatively modest use of Internet access, very aggressive conversion to digital and very rapid commencement of 3G deployments, with all the efficiencies available from use of

⁷ See, e.g., *In the Matter of AT&T Wireless Service, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. Petitions Regarding CMRS Spectrum Cap Limits*, DA 00-318, Sprint PCS Opposition at 3 (filed Mar. 3, 2000).

this advanced technology. Thus, a 10 MHz segment is obviously not enough to even begin a meaningful attempt to meet such capacity needs, especially considering that in certain situations a disproportionately large amount of the spectrum would be devoted to guard bands.

In these circumstances, the auction statute and Commission policies militate against spectrum fragmentation into small, sub-optimally sized building blocks. The Commission has consistently sought to “tailor the design of each auction to fit the characteristics of the authorizations to be awarded,” and has “established criteria for selecting the auction design most appropriate for each particular service.”⁸ For example, in the 1996 Direct Broadcast Satellite auction, the Commission applied these criteria and decided “not to divide the available blocks of channels into smaller parcels, or to auction each channel individually, because the configuration of current DBS systems indicates that channels are most effectively utilized when they are available in a substantial quantity at a given orbital location.”⁹ The Commission specifically addressed the point made by Sprint that small building blocks allow companies that need more spectrum to aggregate it:¹⁰

⁸ *In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Notice of Proposed Rulemaking, 11 FCC Rcd. 1297, ¶¶ 78-79 (1995), citing *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd. 2348, ¶ 109 (1994).

⁹ *In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd. 9712, ¶ 166 (1995).

¹⁰ Petition at 5.

In order to aggregate sufficient channels to support a viable DBS service, these permittees would have to negotiate some form of agreement for joint operations from 110 [degrees], or else work out a system of channel swaps to consolidate assignments. The process necessary in either case is often a time consuming one that is not always successful, which is further complicated by the time required for Commission consideration and approval of the resulting transactions. Moreover, because the number of parties receiving additional channels is limited, there is no guarantee that those channels would go to the person who values them most highly and who can put them to the most efficient use to the benefit of American consumers. Such a result would conflict with our goals for the DBS service, as they would impede prompt delivery of service to the public and thwart efficient use of valuable spectrum resources as a much-needed competitor in the MVPD market.

By offering the available channels in two large blocks, we obviate the need for reaggregation and allow the auction winners to proceed directly to acquisition or construction of satellites and operation of their systems without having to negotiate with other permittees or engage in several rounds of administrative processing.

In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, Report and Order, 11 FCC Rcd. 9712, ¶¶ 135-36 (1995) *aff'd*, 110 F.3d 816, 827 (stating that “the Commission reasonably concluded that it would be in the public interest to award ACC’s channels to the highest bidder in a block large enough to provide competitive DBS service.”). Likewise here, while superficially permitting aggregation, the Sprint/U.S. West proposal would make it three times more difficult for companies to secure access to critically needed spectrum.

In addition to promoting inefficiency, fragmentation of the spectrum combined with retention of the cap would *raise* the same competitive concerns that the

Commission intended to avert when it first imposed the spectrum cap in an environment of less spectrum-intensive, 2G services. The proposed fragmentation would specifically raise the specter of the very spectrum warehousing that the cap was originally intended to avoid¹¹ – it would allow a “zero-sum” game on the part of incumbents. By occupying a single 10 MHz block in a given area, an incumbent would be able to make the remaining spectrum much less useful for Internet-type services and thwart the wireless Internet plans of a competitor. Indeed, even if no incumbents pursue such strategies, spectrum fragmentation is virtually guaranteed to ensure less aggressive competition. The plan put forward by Sprint and U.S. West could result in three 10 MHz blocks in the hands of three different companies, each incapable of offering the spectrum-intensive services requested by consumers.

II. THE BENEFITS CITED BY SPRINT AND U.S. WEST DO NOT COUNTERBALANCE THE RISKS OF SPECTRUM FRAGMENTATION

The benefits cited by Petitioners in support of their proposal¹² do not alleviate these serious concerns – the mismatch between the size of the blocks and the capacity needs for advanced services, the attendant risks of less aggressive

¹¹ See *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool*, Third Report and Order, 9 FCC Rcd. 7988, ¶ 258 (1994) (“CMRS Third Report and Order”) (“The purpose of the cap is to prevent licensees from artificially withholding capacity from the market.”).

¹² *Id.* at 5-7.

competition, and the discriminatory effects of the proposal. In particular, the Commission should not be swayed by Sprint's argument that failure to apply the cap would create a discrepancy in the spectrum blocks to which competing companies have access. The Commission has long decided to permit different entities to hold different amounts of spectrum, and indeed has auctioned the CMRS spectrum in blocks of different sizes, allowing for the different needs and business plans of prospective bidders.¹³ The Commission's 1994 decision in that regard is consistent with the workings of a competitive marketplace, where companies are generally free to secure production inputs in the variable quantities required by their business plans.

The wireless marketplace has become extremely competitive, both at the regional and at the national level. Nationally, the last few months have seen the creation of one more flat-rate national pricing package (recently announced by Verizon), and an additional near-national competitor (SBC/BellSouth). In view of these developments, the national wireless market is now characterized by fierce competition among at least five national companies and a myriad of vigorous regional players, while the flat-rate national plans discipline any attempt of a regional carrier to get away with local rate increases. Thus, where the Commission had accepted the idea of varying spectrum blocks in a less competitive marketplace in 1994, there is no legitimate reason why the same notion should be of concern today. In any event, the Commission could

¹³ *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, 9 FCC Rcd. 5532, ¶ 127 (1994) (noting that spectrum blocks of unequal size (30 MHz and 10 MHz) were allocated to meet the needs of different entities with different business plans).

limit this disparity by adopting an interim cap of 60 MHz (with at least 15 MHz coming from the C or F Block PCS spectrum). Although GTE believes that the Commission should grant the petitions for reconsideration that have been filed in the Commission's spectrum cap proceeding to do away with the cap entirely, a cap in this instance would temporarily limit the ability of a PCS licensee to acquire more than 30 MHz of the new spectrum.

Sprint also expresses concern that failure to fragment the 30 MHz block may leave winners saddled with spectrum they do not need, arguing that "reliance on the aftermarket to dispose of excess spectrum is unrealistic. . . ." ¹⁴ In GTE's experience, however, while the secondary spectrum market does need to become more liquid, the main problem concerning that market is shortage of sellers, not buyers. GTE itself has been successful in disaggregating its PCS spectrum in the Spokane/Seattle area. To follow Sprint's logic, disaggregation concerns should lead the Commission to auction all spectrum in 1 MHz increments, in the name of allowing maximum flexibility. As discussed above, however, the Commission has dismissed such "building block" structures as inefficient.

In short, if the goal in this proceeding is to level the playing field for all auction participants, including non-designated entities if the Commission should so decide, then the Commission must confirm that the spectrum cap does not apply. However, should the Commission decide to extend the spectrum cap to the reaucted spectrum, GTE urges the Commission to allocate the spectrum in a manner that will

¹⁴ Petition at 6.

provide companies the most flexibility to avoid spectrum cap conflicts. Specifically, if the Commission auctions the spectrum in blocks of 20 MHz and 10 MHz, a licensee which currently holds 25 MHz of spectrum will be able to bid on a single 20 MHz block, rather than having to acquire multiple 10 MHz blocks, as it would under Sprint's proposal.

III. CONCLUSION

For the foregoing reasons and those set forth in GTE's prior comments incorporated by reference herein, the Commission should remove the eligibility restrictions for the reauction, confirm that no spectrum cap applies to this spectrum, and establish bidding credits for small businesses.

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I, Omer C. Eyal, hereby declare that copies of the foregoing Reply Comments of GTE were sent this 17th day of April, 2000 by hand or first-class mail to the following:

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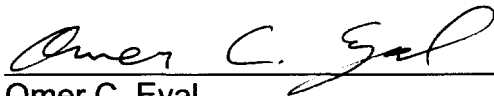
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